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86

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/482,046	01/13/2000	Antonio Gigola	6557	6489
7590	01/29/2004		EXAMINER [REDACTED]	CHEVALIER, ALICIA ANN
Philip K Fitzsimmons Shlesinger Fitzsimmons & Shlesinger 183 East Main Street 1323 Alliance Building ROCHESTER, NY 14604			ART UNIT [REDACTED]	PAPER NUMBER 1772
DATE MAILED: 01/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)
	09/482,046	GIGOLA, ANTONIO <i>GD</i>
	Examiner	Art Unit
	Alicia Chevalier	1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on 12/29/03. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 7-9.

Claim(s) withdrawn from consideration: 11-17.

8. The drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. Other: _____

Continuation of 5. does NOT place the application in condition for allowance because:

Applicant's arguments in after final request for reconsideration, filed December 29, 2003 regarding the 35 U.S.C. 103 rejection over Munters (U.S. Patent No. 3,415,502) in view of Holmberg et al. (3,963,810) of record have been carefully considered but are deemed unpersuasive.

Applicant argues that the combination of Munters and Holmberg fails to provide any expectation of success.

In order to provide expectation of success, the initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP § 2142. Evidence showing there was no reasonable expectation of success may support a conclusion of nonobviousness. MPEP § 2143.02.

The Examiner has already provided a suggestion to the desirability to make the combination, as given in the previous office action; [I]t would have been obvious to one having ordinary skill in the art at the time the invention was made to use impregnated cardboard as the material for the filling members in Munters because Holmberg shows that plastics, metals, and impregnated cardboard are equivalent for their use in the art of cooling tower contact bodies and the selection of any of these known equivalents would be within the level of ordinary skill in the art. Furthermore, Applicant agrees with the Examiner that a person skilled in the art would recognize, from Holmberg's disclosure, that metal, plastics, and impregnated cardboard can be indifferently used to produce panels for cooling towers or air humidifiers (see Applications response page 3, lines 2-5).

Applicant further argues that there is no expectation of success because it was impossible to make undulated cardboard with non-rectilinear undulations and provides a Declaration (Joint Declaration) in support of this argument.

Applicant's Joint Declaration is not found to be persuasive or commensurate in scope with the prior art of record. The Joint Declaration discusses the properties and production of cardboard and paper, not impregnated cardboard as taught by Holmberg. Furthermore, the background of the specification also supports the expectation of success in using an impregnated cardboard in a process to make non-rectilinear panels. The specification in the background of the invention recites that impregnated cardboard gives the best characteristics, page 1, lines 25-27, which strongly implies that impregnating cardboard improves the physical and mechanical characteristics in order to undergo a process to impart non-rectilinear undulations.

In conclusions, Applicant has not provided evidence showing there was not a reasonable expectation of success that impregnated cardboard was impossible to make with non-rectilinear undulations. Therefore, it remains the Examiner's position that the claims are obvious over Munters (3,415,502) in view of Holmberg et al. (3,963,810).

Sandra M. Nolan
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PRIMARY EXAMINER

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1-24-04